

From: Neele Johnston
To: Microsoft ATR
Date: 1/28/02 5:57pm
Subject: Re: U.S. v. Microsoft: Settlement Information

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Date: January 28, 2002

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Subject: Microsoft Settlement

To whom it may concern,

I am writing to encourage you, in the strongest terms, to reject the settlement of United States v. Microsoft, that has been proposed by the Department of Justice and Microsoft Corporation. The proposed settlement is not in the public interest and will only serve to give Microsoft Corporation the green light to inflict further harm on consumers, businesses, and the competitive landscape of the Information Technology industry.

Now is the time for our federal government to step up it's efforts to rein in Microsoft and control it's abusive practices. Having rightly found Microsoft guilty of illegally extending their monopoly in personal computer operating systems to other areas of the software industry, the judicial system has an obligation to impose a penalty on Microsoft that is commensurate with the harm they have caused and that will serve to partially restore competition where the defendant's predatory business practices have destroyed it. This is not the time to go easy on them. This is not the time to tire of the fight for increased competition in the software industry.

In spite of what the government and Microsoft now contend, resolution of this case has nothing whatsoever to do with patriotism, "freedom to innovate," or maintaining America's leadership in a flagship industry. On the contrary, leaving Microsoft intact and unshackled will leave a very serious threat to our national security unresolved. The proposed settlement does far too little to restore competition in the key areas of the software industry where Microsoft has eliminated it. In particular, the settlement seems to validate Microsoft's present monopoly in personal computer operating systems. It is this monopoly, which Microsoft maintains by anti-competitive business practices, which has severely compromised the security of the nation's computing infrastructure, which is the very foundation of modern commerce.

Some argue that the personal computer operating system is an example of a "natural" monopoly and that the software industry benefits from Microsoft's role in setting de-facto standards. First of all, this argument ignores the observation that the Internet, which throughout most of its formative phase grew up outside Microsoft's sphere of influence and in spite of Microsoft's determined attempts to undermine it, has been the single greatest source of innovation in technology for a generation. Some might say the only source. More importantly, the argument ignores the significant national security and business risks that we are now subjected to as a result of Microsoft's monopoly in operating systems that are used in defense, government and business. Operating systems are the most critical piece of infrastructure which either keep commercial transactions and command and control functions safe and secure, or leave them vulnerable to malicious disruption,

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theft, and falsification. These vulnerabilities become increasingly clear with each passing week; one need only make a cursory examination of IT industry news to be keenly aware of the risks and costs associated with them.

If we are inclined to be kind to Microsoft we could argue that the risks are inherent in a monopolized market segment, due to the issue of homogeneity. The differences that exist in naturally varying systems mean that only a minority of the population tends to be susceptible to any particular threat. This is borne out by observing the Apple Macintosh community, which is less than five percent of the personal computer population and enjoys essentially all the same capabilities as Microsoft Windows users. While the ninety-five percent of personal computer users with Microsoft Windows have been subjected to over a dozen well-publicized attacks in the form of Internet email worms, Macintosh users (as well as Linux users, who make up an even smaller percentage), have been invulnerable to virtually all these attacks. This proves, on the face of it, that no one besides Microsoft benefits from Microsoft's monopoly.

Furthermore, if we are inclined to be more realistic and less kind to Microsoft, it is easy to establish that Microsoft's chronic lack of emphasis on quality, reliability or security in the Windows operating system has greatly exacerbated the vulnerability that we are now faced with. Microsoft has now, belatedly, admitted this is an issue and pledged to make security their main focus in the future. This is just marketing hype designed to distract us from the magnitude of the risk we are living under. Only the advent of true competition in the operating systems market segment will ever cure this vulnerability.

Microsoft's performance in reference to the Y2K bug proved that they cannot be trusted to act in the best interests of their customers. Throughout the course of this trial many of Microsoft's defenders have argued that consumers were never harmed in the browser war. This is patently false. Microsoft openly and publicly committed all of their attention and resources to defeating Netscape and embracing (belatedly) the Internet. One need only note the timing of these events to realize that Microsoft was busy fighting the browser war at the precise time that their customers were demanding Y2K fixes, and not getting them. This lack of responsiveness to customer requirements cost American businesses and consumers many billions of dollars, if not more.

During the time of the browser war, I was a director of Information Technology at Fannie Mae, a Fortune 50 company with an IT budget well over \$50 million. I had first-hand knowledge of what Y2K abatement cost my company and it was clear that a considerable portion of it, easily several million dollars, was due solely to Microsoft's tardiness in addressing the Y2K issues in their software, many of which were not solved until well past the eleventh hour, well after the date we had targeted to be fully compliant. I am sure that nearly every other American business faced similar issues and the resulting, unnecessary costs they bore are truly staggering. Anyone who believes this was inevitable or even excusable need only note the fact that the Apple Macintosh operating system was never susceptible to any of the Y2K problems that businesses waited until after the eleventh hour for solutions for from Microsoft. Could this possibly be because Apple has never had the luxury of a monopoly position for its products, but has had to compete on their merits? Had Microsoft targeted reliability and quality as major product goals and had they made a reasonable effort at Y2K abatement at the time they began the browser war, I firmly believe (based on first-hand experience in my company) that the price tag that consumers and businesses would have paid for Y2K compliance would have been 30% to 50% less than it was.

I have over twenty years of professional experience in systems integration and IT management. I have carefully observed Microsoft's rise from the start. My seven years at Fannie Mae convinced me that

Microsoft's heavy-handed control over my industry is very harmful to corporate IT and to the industry in general. I could go on for many pages to explain to you, with hard evidence, why this is so. However, I believe that has already been established in court. What this industry desperately needs is competition in the segments Microsoft controls, such as desktop operating systems.

Any settlement of this case must not only be fair to Microsoft and to the industry they have harmed, it must be seen to be fair by the public and must be seen as a punishment, if a light one, for the misdeeds that have already been established. This proposed settlement is widely viewed as a stunning victory for Microsoft, witness the majority of reports in the press over the past two months, and that alone is reason enough not to proceed with it. It is not a punishment. It neither guarantees competition nor significantly penalizes Microsoft. The current environment in which Microsoft is seen by most as getting away with murder as a result of their own might and cleverness, and often being lionized for it, is not healthy for the Judicial System or for America, to say nothing of industry.

Microsoft claims that they have a right to compete as vigorously as possible and that they are simply better at it than other companies. However, Microsoft has no awareness of what honorable or gentlemanly competition is all about. In most arenas we do not allow competitors to openly cheat, especially if they are prodigious and unrepentant about it. If we will not allow such behavior in the Olympics, how can we feel comfortable allowing it to continue in Information Technology? The winner must bear a special burden of scrutiny. In addition to numerous abuses that they have not yet been tried for, or are perhaps not technically criminal, Microsoft has been tried and found guilty, upheld on appeal, of severe criminal misconduct. Over the course of this trial, their entire executive staff engaged in numerous, obvious acts of perjury, demonstrating that it is their usual way of doing business. No one seriously believes that they can be trusted to honor the terms of a consent decree.

Given the remarkably high profile of the company, the citizens of this country cannot allow this state of affairs to continue. I want to urge my government, in the strongest terms, to withdraw its support for the settlement that is on the table. It does not go nearly far enough to serve the public's interests. It is riddled with loopholes, which Microsoft has proven for nearly a decade that they will exploit to the fullest. It sends the wrong messages to the public, to Microsoft, and to whatever would-be innovators may be thinking of trying to compete against Microsoft. It sends a signal to terrorists that we are sanguine about the fact that they have only a single target to concentrate on to take out the infrastructure of America's economy. It gives Microsoft the government's implicit blessing in their continued effort to undermine the free software and open source movements, which represent the only real hope for competition in operating systems and infrastructure technologies.

Please give some consideration to adopting the proposal of remedies put forth by the nine dissenting states. Their proposal, while still inadequate to fully address the threat, is at least a significant improvement over the settlement proposed by the Justice Department.

Yours very truly,

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